Spotlight on African and Asian Opportunities

Hong Kong Business and Legal Summit

On May 23, 2019, the Hong Kong International Arbitration Centre (HKIAC) held its second biennial Hong Kong Business and Legal Summit with a focus on Africa. Organised in collaboration with the Asian-African Legal Consultative Organisation (AALCO), the Summit brought together more than 50 business leaders and legal experts to discuss opportunities and challenges of investing in Africa. The summit organised was into five main panel sessions with sixteen invited speakers. In view of exponential Asian foreign investment in Africa, this Summit was a timely forum for navigating future directions of Asia-Africa economic partnerships and arbitration.

Adopting a Davos-style format, speakers made five-minute introductions followed by panel discussions and questions from the audience. Moderated by Ms. Kiran Sanghera, this aided a very lively, open and interactive debate. Panel discussions were extremely diverse focusing on Asia-Africa FDI trends, case studies of Chinese investments in Africa, project finance, and risk mitigation.

In her opening address, Ms. Sarah Grimmer, Secretary-General of the HKIAC gave an overview of HKIAC administered arbitration disputes involving Afro-Asian investments. She highlighted key trends of these disputes noting that since 2011, the HKIAC has administered 30 proceedings involving investments in 10 African states and parties from nine Asian jurisdictions. Her remarks established the role Hong Kong SAR and the HKIAC play in providing a neutral, convenient, independent and investor friendly centre for settling an increasing number of Asian African disputes. In particular, she noted that with the expansion of the Belt and Road Initiative to more African states, there will be an increase in disputes between African and Asian parties.

Professor Kennedy Gastorn, Secretary-General of AALCO gave the second opening address on centuries old partnerships between the African and Asian continent. Worthy of note, he emphasized the role of the 1955 Bandung Afro – Asian Conference in fostering mutual economic partnerships. This led to the establishment of AALCO in 1956 which pioneered the establishment of regional arbitration centres in Africa and Asia. He welcomed renewed partnerships of the two continents and future collaboration with the HKIAC.
The first panel discussions were led by Robert Koepp, Director of the Economist Corporate Network. He gave a short overview of key economic indicators in Africa. His presentation underscored the role of Asian outward investment in Africa in key economic sectors like natural resources and manufacturing. Highlighting the important function of Indian and Chinese investments he predicted that we might see a future convergence of economic indicators of the two continents. His presentation was followed by panel discussions with Ms. Amaku Anku, a political risk analyst (Practice Head Africa at Eurasia Group) and Ms. Nneka Chike-Obi, financier focusing on African investments (Principal at Acorus Capital). Their presentations highlighted key unexplored, emerging and potential investment sectors in African markets. These include telecommunications, fintech, bank services, manufacturing and consumer goods. They also highlighted the unique barriers investors may face and means of addressing these risks.

Ms. Yan Zhang, a partner in Sidley Austin’s global arbitration practice led discussions about the second panel. This panel centered on specific hydro-power Chinese projects in West and East Africa successful completed by the China International Water and Electricity Corporation (CWE). Mr. Yongtian Wang, General Manager, Africa Department at the CWE highlighted some of the operational challenges faced during the completion of these projects. Mr. Shouguo Jiang, who is the Vice-President at the CWE discussed the success of these projects. They also highlighted important corporate social responsibility projects established in the host communities of these projects. Importantly, they highlighted the role of key engagement with partners and compliance with international standards and environmental conservation practices.

The third panel discussion focused on project finance. This session was led by Mr. Wesley Pang, Managing Counsel at the HKIAC. Ms. Melisha Naidoo, who is a Senior Legal Professional at the New Development Bank gave a presentation on key transactional stages of financing investments in Africa. She noted that arbitration was an option for the dispute resolution clause in financing contracts and HKIAC was one of the institutions selected as the administering arbitral institution. She emphasized the role of financial and legal due diligence before and during project financing.

Legal transactions were the subject of the fourth panel. This session was coordinated by Vincent Connor, Partner, Risk Advisory Services at Pinsent Masons. In this panel, discussions focussed on important legal skills for completing transactions successfully in Africa. In their presentations, panellists emphasized commonalities and key differences across the 54 African jurisdictions. Claudia Santos Cruz who is a Consultant at Morais Leitão gave an overview of Chinese investment in Lusophone Africa. Charles Yao a Partner at Jingtian & Gongcheng, gave an overview of Chinese
government’s approval process for outbound investments. He noted that China’s economy has had, in the past, similarities with many African states today. He thus noted that Chinese investments can bring development to Africa. Stéphane Brabant who is Co-Chair of Herbert Smith Freehills Africa Practice, gave insights from his extensive experience in Africa. He noted that applicable laws in Africa are well developed but stated that implementation of these laws was the main challenge. He gave a seven point list for getting deals through in Africa.

The fifth and final panel discussion focused more specifically on planning ahead by effective risk mitigating strategies. Ms. Sarah Grimmer led discussions. Professor Won Kidane who is an academic and legal advisor to many African governments, gave an overview of political, cultural, legal and economic risks that may be faced by investors in Africa. He emphasized that the informality of commercial arrangements may be seen as a potential risk. Ms. Jingyi Li Blank gave an interesting overview on the role played by private investigations in asset tracing and asset recovery for arbitration award enforcement. She stated that because public records are not always available, using investigative journalists may prove beneficial for getting information in Africa. Lastly, A B Mahmoud SAN, a partner at Dikko & Mahmoud, gave case-studies using Chinese companies and Chinese special economic zones operating in Nigeria. Importantly, he highlighted the role of community engagement and using local counsel to mitigate risk.

In concluding remarks, Mr. Wesley Wong, Solicitor General of Hong Kong SAR gave an overview of legislation and policies which make Hong Kong the leading investment arbitration hub in the world. He highlighted recent initiatives like the 2019 China-Hong Kong Agreement on Mutual Assistance in Court-ordered Interim Measures. He also noted that African nationals are registered as foreign counsel in Hong Kong.

Overall, the 2019 HKIAC Legal and Business Summit was a remarkable success. Participants were left with an optimism for renewed mutual economic Afro-Asian partnerships. In this regime, Hong Kong and the HKIAC will undoubtedly play important roles in connecting Asia and Africa.

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